

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

COBBLER NEVADA, LLC,

Plaintiff,

v.

MICHAEL WILSON, et al.,

Defendants.

Case No. C15-1616-TSZ

ORDER DIRECTING CLERK TO  
IDENTIFY PRO BONO COUNSEL AND  
LCR 39.1 NEUTRAL FOR EARLY ADR  
PROCEEDINGS

This matter comes before the Court upon defendant Michael Wilson's February 3, 2017 letter, Dkt. 131, which the Honorable Thomas S. Zilly construed as a motion for appointment of counsel and referred to the undersigned on February 10, 2017. Dkt. 132. Having reviewed the parties' pleadings, the "Plan of the U.S. District Court for the W.D. of Washington for the Representation of Pro Se Litigants in Civil Rights Actions" (the "Pro Bono Plan"), and the balance of the record, the Court ORDERS that defendant Michael Wilson's motion for appointment of counsel, Dkt. 131, is GRANTED IN PART for the limited purpose of conducting an early alternative dispute resolution ("ADR") procedure pursuant to LCR 39.1.

Generally, the decision to appoint pro bono counsel rests within "the sound discretion of the trial court and is granted only in exceptional circumstances." *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004). A finding of exceptional

1 circumstances requires an evaluation of both the likelihood of success on the merits and the  
2 ability of the party to articulate his or her claims *pro se* in light of the complexity of the legal  
3 issues involved. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). These factors  
4 must be viewed together before reaching a decision on a request for counsel. *Id.* At this early  
5 stage of litigation, defendant has failed to demonstrate that exceptional circumstances warrant  
6 the appointment of counsel for the duration of the case. However, the Court also finds that the  
7 unique circumstances of this case indicate that the interests of justice will best be served if  
8 counsel from the Western District Pro Bono Panel is appointed to represent defendant for the  
9 limited purpose of conducting an early ADR procedure pursuant to LCR 39.1.

10 In making this finding, the undersigned has considered the nature and complexity of  
11 plaintiff's factual and legal claims against defendant. The undersigned finds that the plaintiff,  
12 defendant, and the Court will all benefit from appointed counsel's assistance in improving  
13 communication between the parties, limiting, narrowing or simplifying the issues in dispute,  
14 and potentially achieving settlement of some or all issues between the parties through an early  
15 ADR procedure.

16 Accordingly, the parties are directed to read and comply with the deadlines and  
17 procedures outlined in § 3(g)-(i) of the Pro Bono Plan.<sup>1</sup> Specifically, following entry of the  
18 Order of Appointment, the Clerk shall send the appointed attorney a Notice of Appointment  
19 and Interim Notice of Appearance, which shall include a statement that plaintiff's counsel must  
20 only communicate with the appointed attorney, and not with defendant Wilson, in accordance  
21 with Rules 4.2(b) and 4.3(b) of the Washington Rules of Professional Conduct. *See* Pro Bono  
22 Plan § 3(g). The Clerk's Notice of Appointment and Interim Notice of Appearance also  
23 suspends the provisions of LCR 16(a) and (d) requiring a scheduling conference, joint status

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24 <sup>1</sup> The Pro Bono Plan was most recently amended effective August 1, 2010, and is  
25 available on the Court's website via links to "Attorneys" and "Pro Bono Panel"  
26 ([www.wawd.uscourts.gov/attorneys/pro-bono-panel](http://www.wawd.uscourts.gov/attorneys/pro-bono-panel)) or "Representing Yourself"  
(<http://www.wawd.uscourts.gov/pro-se>).

1 report, and scheduling order, until completion of the ADR proceedings. *See* Pro Bono Plan §  
2 3(i).

3 As soon as practical following appointment, pro bono counsel is directed to confer with  
4 the defendant regarding the ADR procedures available under LCR 39.1(a)(3). Pro bono  
5 counsel shall then meet and confer with opposing counsel to develop a plan for an early ADR  
6 procedure, and shall attempt to reach agreement on the factors listed in § 3(i)(iv)(A)-(E). The  
7 parties are advised that they are required to submit a Joint Pro Bono ADR Status Report  
8 addressing these factors not later than twenty (20) days following the Clerk's Notice of  
9 Appointment and Interim Notice of Appearance. *See* Pro Bono Plan to § 3(i)(v).

10 Unless otherwise ordered, the early ADR procedure shall be completed not later than  
11 seventy-five (75) days following the Clerk's Notice of Appointment and Interim Notice of  
12 Appearance. *See* Pro Bono Plan § 3(i)(vii). Upon completion of the ADR procedure,  
13 appointed counsel shall submit a report to the Court and opposing counsel stating (1) when the  
14 ADR procedure occurred, and (2) whether the case settled as to some or all issues.<sup>2</sup> Following  
15 submission of this report, appointed counsel's limited representation shall be deemed  
16 complete, and counsel may submit a proposed order terminating the limited representation. At  
17 that time, appointed counsel may move for an award of attorney's fees under any applicable  
18 authority, although the Court is unable to assure counsel of compensation.

19 Accordingly, defendant Wilson's motion, Dkt. 131, is GRANTED IN PART. The  
20 Clerk of the Court is DIRECTED to identify counsel from the Pro Bono Panel to represent  
21 defendant for the limited purpose of conducting an early ADR procedure pursuant to LCR  
22 39.1. Upon notification from the Clerk, the undersigned shall appoint the selected attorney to  
23 represent defendant Wilson in early ADR proceedings in this case. Finally, the Clerk is  
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26 <sup>2</sup> If the ADR procedure was a mediation, however, the mediator's report required by  
LCR 39.1(c)(6) will serve in lieu of appointed counsel's report.

1 directed to send a copy of this Order to Judge Zilly, and a copy of this Order and § 3(g)-(i) of  
2 the Pro Bono Plan to defendant Wilson and counsel for plaintiff.

3 DATED this 22nd day of February, 2017.

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5 JAMES P. DONOHUE  
6 Chief United States Magistrate Judge  
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